Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 33902
Docket No. MS-32949
00-3-96-3-296

The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

(Rick L. Kadri
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation

STATEMENT OF CLAIM:

"This is to serve notice by the Uniform Rules of Procedure of the National Railroad Adjustment Board effective May 16, 1994, of my intention to file Ex Parte Submission within 75 days covering an unadjusted dispute between me and Consolidated Rail Corporation involving the following:

Not properly shown on the Youngstown Seniority District machine operator roster with 11/29/74 service in Class I machine operator. Attached is the employe change of status form which was used to track employes and the method to obtain seniority. It shows that I went from machine operator to a trackman position."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

A roster protest was filed on behalf of Claimant on August 15, 1995, alleging that Claimant's Machine Operator Class I seniority date should be November 29, 1974 rather

than September 26, 1975. Claimant submits a Penn Central Employe Change of Status form with such date, indicating that it was misplaced when Penn Central was taken over by Conrail in 1976, to his detriment. He explains the lapse of time as resulting from Carrier's nine year delay in getting him a copy of his files requested in 1984.

Carrier argues that this roster protest is procedurally barred from consideration by the Board under the time limits set forth in Rule 4, Section 6, which provides:

> "(b) Employees shall have 90 days from the date the roster is posted to file a protest, in writing, with the designated officer of the Company, with copy furnished the General Chairman and local representative. Employees off duty on leave of absence, furlough, sickness, disability, jury duty or suspension at the time the roster is posted, will have not less than 90 days from the date they return to duty to enter protest."

After a careful review of the record, the Board is of the opinion that this claim must be dismissed. Conrail has been in existence since April 1, 1976. There is no evidence in the record indicating that any roster protest was made prior to the instant claim filed some 20 years after the fact, or that some conduct on Carrier's part prevented Claimant from correcting his roster standing within the requisite 90 day period. There has been no current change in Claimant's seniority date, which has been listed as September 26, 1975 for over 20 years. Rule 4 Section 6 is clear and unambiguous, and requires a finding that the instant claim is time-barred. See Third Division Awards 32442, 31134, 30776, 29116, 27314, 27313, 25847.

## AWARD

Claim dismissed.

## ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 24th day of January, 2000.